

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-205727

DATE: May 17, 1982

MATTER OF: Pioneer Motor Inn

DIGEST:

1. Where an invitation for bids does not contain specifications that reflect the agency's actual needs, the agency has a compelling reason for cancellation after bid opening.
2. Award to low bidder with the intention to negotiate necessary changes to the specifications is improper.
3. Where the record shows that a solicitation properly was canceled because of defects in the specifications, protest that the cancellation was designed to circumvent Small Business Administration review of an expected nonresponsibility determination with respect to the protester is academic.

Pioneer Motor Inn protests the cancellation of invitation for bids (IFB) No. DAKF49-81-B-0049 issued by the Department of the Army for furnishing meals and lodging to Army applicants and enlistees at the U.S. Armed Forces Examining and Entrance Station in San Antonio, Texas. After bid opening, the Army rejected all bids and canceled the IFB based upon its determination that the specifications were ambiguous, inadequate, and materially defective in stating the Government's actual needs. Pioneer contends the cancellation was improper and requests reinstatement of the IFB. We deny the protest.

Four bids were received in response to the IFB; Pioneer was the apparent third low bidder. Although the contracting officer noted certain apparent deficiencies in each bid regarding the types of dining and lodging

facilities offered, no determinations were made concerning the acceptability of individual bids because, after reviewing the IFB and the Army's actual meal and lodging requirements, the contracting officer determined that the specifications were so ambiguous and inadequate that it would be impossible to evaluate the bids properly. Specifically, the contracting officer found that the IFB (1) failed to define adequately the requirement for a "full service dining facility," (2) contained ambiguous transportation requirements, which, with the Government's acquisition of a passenger bus subsequent to bid opening, had become unnecessary in any event, and (3) contained meal and lodging requirements that exceeded the Army's actual needs. The Army reports that it plans to correct these solicitation deficiencies and resolicit the requirement.

Pioneer contends that the reasons upon which the Army based its cancellation determination are not sufficiently compelling to warrant cancellation.

The Defense Acquisition Regulation (DAR) states that after bids have been opened, award must be made to the responsible bidder who submits the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation. DAR § 2-404.1(a) (1976 ed.). A number of reasons considered sufficiently compelling to justify cancellation are listed in the DAR, including inadequate or ambiguous specifications and the fact that specifications cited in the invitation have been revised. DAR § 2-404.1(b). We consistently have held that the authority vested in a contracting officer to decide whether to cancel a solicitation under the regulation is extremely broad, and in the absence of a showing of an abuse of discretion, a contracting officer's decision to cancel an IFB will be upheld. 49 Comp. Gen. 584 (1970).

We believe the cancellation was justified because the IFB's specifications clearly did not reflect the Army's actual needs. For example, the solicitation overstated the Army's actual needs with respect to each of the IFB's five line items: the number of breakfasts that actually would be required was overstated, 16,000 instead of 10,176; dinners, 360 instead of 114; suppers, 14,700 instead of 9,848; double rooms, 17,900 instead of 11,828; and single rooms, 1,000 instead of 120. Also, the acquisition of a Government passenger bus for use in transporting personnel to and from dining and

lodging facilities eliminated the need for a contractor to provide transportation, as required by the original IFB's specifications. (The transportation cost was included in a bidder's price for lodging.)

Pioneer argues that the Army could make an award on the basis of the original IFB and then negotiate the changed requirements with the awardee. We disagree. We have recognized the necessity for contract modifications in general, see 50 Comp. Gen. 340 (1971), we also consistently have stated that the integrity of the competitive bid system precludes an agency from awarding a contract competed under a given specification with the intention of changing to a different specification after award. A&S Manufacturing Company, 53 Comp. Gen. 838 (1974), 74-1 CPD 240. The reason is that such a procedure clearly would be prejudicial to the other bidders under the invitation, and thereby have the effect of circumventing the competitive procurement statutes. See Moore Service, Inc., B-200718, August 17, 1981, 81-2 CPD 145.

In view of the above, and while the deficiencies in the solicitation indeed may have reflected poor procurement planning on the Army's part, we believe that the Army had a compelling reason to cancel the IFB.

Pioneer, suggesting that the two bids lower than its own should have been rejected, also alleges that the cancellation was designed to avoid a Small Business Administration review of any Army determination that Pioneer was nonresponsible. We need not consider this matter in view of our conclusion that the Army properly canceled the IFB pursuant to DAR § 2-404.1.

The protest is denied.

for *Milton J. Aroslan*
Comptroller General
of the United States